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STRATEGY FOR SURVIVAL: PROBLEMS OF LEGISLATIVE AND EXECUTIVE POWER IN THE FIELD OF ENVIRONMENTAL PROTECTION IN THE UKRAINE

*Yuri Scherbak**

The peculiarity of my point of view on environmental protection is that I simultaneously perform both legislative and executive functions. On the one hand, as a member of the Committee on Ecology of the Soviet Union's Supreme Soviet, I directly take part in the formulation of the laws and decrees that the nation's supreme body enacts. These include laws concerning the environment. On the other hand, as Minister of Environmental Protection for the Ukraine and a member of the Ukrainian Cabinet of Ministers, I am obliged to participate in bringing the environmental programs that the Parliament adopts into life.

Political processes in the Soviet Union during recent years—and especially since 1989, when the country elected the Congress of Peoples' Deputies—have intensified considerably the attention that the nation is paying to environmental issues. In the early years of perestroika and glasnost, nongovernmental organizations such as the Green Movement began advocating the recognition of the environmental rights of human beings, particularly the right to live in an environmentally safe habitat. These years also saw the lifting of the secrecy that had shrouded information on the nation's environmental condition. These astonishing data revealed that a number of cities and regions in the Soviet Union are casualties of years of environmental degradation.

One example of such a region is the Ukraine: a republic with potential equal to that of a large European country. Its population

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is 52 million—18% of the Soviet Union's total population—and its area is 603,700 square kilometers—2.7% of the Soviet Union's total area. The Ukraine produces a major portion of the Soviet Union's significant products, including 50% of its iron ores, 7% of its steel and rolled metal, 60% of its sugar, and 20% of its meat, milk, and potatoes. Moreover, the republic annually extracts about 192 million tons of coal—25% of the Soviet Union's total coal production—and harvests about 50 million tons of grain. The energy production, metallurgical, mining, and chemical industries are the Ukraine's main industries. Seventy-two percent of the republic's industrial potential supports these basic industries.

The existing industrial structure in the Ukraine does not favor the environment. A quarter of all the Soviet Union's harmful waste disposal activities and toxic discharges occur in the Ukraine. Twenty-five percent of the republic's underground waters are polluted. Moreover, eighty percent of its arable lands have been developed, and various types of erosion affect a considerable part of them. In addition, the Ukraine is experiencing a severe water shortage. Each person has ten times less water than the average Soviet citizen.

In 1990, nineteen cubic kilometers of sewage were discharged into the Ukraine's water basins, including 3.2 cubic kilometers of contaminated sewage. The republic also discharged 9.5 million tons of harmful substances into the atmosphere. Thirty percent of this total figure was sulfur dioxide, 7.3 percent was nitrogen oxides, and 4.5 percent was hydrocarbons.

Certain areas of the Ukraine are particularly devastated. For example, the pollution of the Azov and Black Seas is a grave problem. The Donets and Dneper industrial basin is an exemplary result, not only in the Soviet Union but also in Europe, of the way in which cumulative industrial impacts can degrade the environment. Moreover, the Chernobyl accident, a global catastrophe, sharply worsened the environmental situation in the Ukraine. Millions of hectares of agricultural lands and forest suffered radioactive contamination. More than 1600 towns and villages, with a total population of 1.5 million, were contaminated, and tens of thousands of people continue to experience severe health problems as a result of the accident. In 1990, the republic's Supreme Soviet declared the Ukraine an environmental disaster area.

Generally, as a result of an unprecedented combination of adverse environmental, economic, and social factors, there has been a record decrease in the average life expectancy of Ukrainian men by ten years and Ukrainian women by five years in comparison with the

other industrialized nations. There also have been record increases in the number of deaths, cancers, immunodeficiencies, and mental disorders in the republic.

All these circumstances urged us, the legislative and executive officials, immediately to develop a strategy for survival.

In 1989 and 1990, the Union and the republics adopted decrees containing priority measures to improve their environmental condition. For a number of reasons, however, the measures turned out to be ineffective. It is worth noting that a certain legislative euphoria marked this period, in which the new, democratically elected bodies of power—the Peoples' Deputies at all levels—ruled. Individuals thought that the development and adoption of new laws and decrees could solve all of the nation's problems. At the same time, they paid little attention to the development of particular mechanisms to secure the effective execution of these laws. From the juridical point of view, the weakness of the measures showed in such vaguely defined terms as "environmental sovereignty," "zone of environmental catastrophe," "environmental human rights," and "environmental crime." Rene Descartes said, "Determine the meaning of words and you get the world rid of half its doubts." Therefore, I suggest the establishment of an ad hoc working group to develop juridically precise definitions that could be the basis of international environmental law.

At present, relations between the Soviet Union and the republics in the area of environmental protection are complicated and sometimes tense. The Union's republics, the Ukraine included, have adopted declarations of state sovereignty as well as a number of legislative acts stating that the laws of the republics are superior to the laws of the Union. On the basis of the Ukrainian Supreme Soviet's decree regarding the placement of all enterprises under the jurisdiction of the republic, we resolve to establish and implement environmental controls over the whole territory of the Ukraine and all its property, no matter who owns that property. We also believe that all the republics should sign beneficial environmental agreements.

There are three laws that currently form the basis of environmental law in the Ukraine. They are entitled, respectively, "On Environmental Protection," "On the Status of the Territories Contaminated with Radionuclides as a Result of the Chernobyl Disaster," and "On the Social Protection of Citizens Who Have Suffered as a Result of the Chernobyl Disaster." The Ukraine's Supreme Soviet adopted these laws in 1991.

The Supreme Soviet drafted the first law, "On Environmental Protection," by taking into account international environmental legal practice. The law clearly regulates the rights and duties of authorities at all levels regarding issues of environmental protection. Moreover, for the first time ever in the Ukraine, the law introduced the principle of "the polluter pays." As of July 1, 1991, enterprises that pollute the environment must pay a penalty, and beginning in 1992, there will be a charge for the use of natural resources. Relying on the law "On Environmental Protection" as a foundation, the Ukraine currently is developing standards that will make clear the law's main provisos and establish a solid legislative and economic base from which to pursue an active environmental policy.

The laws concerning the Chernobyl accident are unprecedented. Probably for the first time in human history, a major technological catastrophe has required the development of special laws to protect the interests of millions of people. For the first time in world practice, the use of exact scientific criteria has laid the groundwork for laws that address the issue of protecting the populations of areas that have endured varying levels of soil contamination by radioactive cesium, strontium, and plutonium. These laws created an evacuation zone encompassing the area within thirty kilometers around the Chernobyl plant, a zone from which residents were obliged to move; a zone from which residents could move if they chose; and a zone of radiological control. In addition, the laws developed a system of privileges and compensations to those who suffered from the Chernobyl accident. Byelorussia and the Russian Federation adopted similar laws, and these laws served as the basis for the development and adoption of the Soviet Union's integrated law.

Life, however, shows that the adoption of laws—whatever good they do provide—cannot solve all environmental problems. The task of simultaneously putting laws into practice and taking into account the given economic, financial, social, moral, and mental situation in a state is the most complicated problem.

An analysis of the numerous legislative acts and decrees adopted during the last ten years to address environmental problems shows that most of these acts and decrees have not been observed. The resistance of industrial enterprises and local executive authorities, the lack of financial and material means of compliance, the imperfection of the laws, and the fear of social consequences—for example, strikes following the closing of environmentally unsafe enterprises—have been among the reasons for this failure. Moreover, the mighty Soviet Union's ministries and supervising agencies, especially its

energy and military defense complexes, have played a major role in disregarding the Ukraine's interests.

A considerable factor in the reduced effectiveness of measures to mitigate the Ukraine's environmental situation has been the weakness of state environmental authorities and the insufficiency of their resources. The approximately 2500 persons working in the Ukraine's Ministry of Environmental Protection are unable to exercise proper control over the republic's natural resources. The ministry's laboratory and research base is weak. There is in fact neither any nationwide environmental monitoring system nor any integrated computer data base on the state of the environment.

Yet, in 1990 and 1991, we have seen a sharp turn in state policy toward the solution of the Ukraine's burning environmental issues. At present, the republic is developing a national strategy of environmental survival. The strategy has three stages: the implementation of extraordinary state priority measures during 1992 and 1993; the stabilization of the Ukraine's environmental situation during 1995 and 1996; and the improvement and rehabilitation of the republic's environment between 1998 and 2005.

It is clear that the Ukraine can achieve radical improvement of its environmental situation only through fundamental structural changes in industry, including a transition to modern energy-saving technologies. As international experience shows, there is no possibility of improving the state of the environment by the imposition of fines and sanctions alone. The Ukraine's Ministry of Environmental Protection intends both to carry out a flexible policy of threats and bribery, using "economic instruments of impact" against polluters, and to cooperate with enterprises and encourage them to introduce new technologies and effective pollution control methods. At present, the republic is working to establish a Council of Environmental Security. Representatives from state, science, and public organizations, as well as from polluting industries, will be members of this council. The council members will discuss problems and present joint recommendations for their solution.

The development of a market economy requires the creation of an environmental structure: a network of joint and small ventures and associations to, among other things, recycle secondary raw materials, develop and introduce new pollution control methods, and provide scientific, engineering, marketing, and legal services related to environmental protection.

We also think that international environmental cooperation should be strengthened and broadened. The Ukraine, as a sovereign state,

intends to enter the common European house and enjoy equal rights. Therefore, we count on the help of the European Community, the United States, and Canada in dealing with our catastrophic environmental situation. We are interested in getting privilege credits for the purposes of rehabilitating the environment, and in exchanging modern technologies and know-how and setting up joint ventures. We hope to sign agreements on cooperation and mutual assistance with the environmental ministries of a number of countries, including the United States Environmental Protection Agency. We intend to observe international environmental agreements that the Soviet Union and Ukraine have signed. As a member of the United Nations (UN), the Ukraine intends to participate actively in the UN's 1992 conference in Brazil on global environmental problems.

I hope that our conference here will be of great importance in promoting mutual understanding and cooperation on global, regional, and local levels.